
Samuel Prevost
v.
Division of Insurance

Docket No. E2003-09

Decision and Order

Introduction and Procedural History

On or about December 22, 2003, Samuel Prevost (“Prevost”) filed a notice of claim for an adjudicatory proceeding with the Division of Insurance (“Division”), appealing the denial of his application for an insurance producer’s license. I was designated as presiding officer. A notice of hearing issued on January 2, 2004, scheduling a prehearing conference for January 27 and a hearing for February 5. The notice stated that the hearing would be conducted in accordance with G. L. c. 30A and the Standard Adjudicatory Rules of Administrative Practice and Procedure, 801 CMR 1.00 *et seq.* The Division filed its answer on January 5. At Prevost’s request, the prehearing conference was continued until January 29. Prevost represented himself throughout this proceeding; Douglas Hale, Esq. represented the Division.

Prevost’s answer to Question 1 in the Background Information section of his August 14, 2003 license application indicated that he had been convicted of a crime. In a statement attached to his application, he said that on September 14, 2002 he “pleaded guilty to conspiracy to commit bank fraud due to relations with an agency employee.” By letter dated November 26, 2003, the Division denied Prevost’s application for two stated

reasons: 1) he had been convicted of conspiracy to commit bank fraud, a felony offense, on April 5, 2000; and 2) his statement about his guilty plea in his application. As legal support for its decision, the Division cited G. L. c. 175, §162R, subsections (a)(6), which allows the Commissioner of Insurance (“Commissioner”) to refuse to issue a license to a person who has been convicted of a felony, and (a)(8), which allows her to refuse a license to an individual who “has used fraudulent, coercive or dishonest practices, or demonstrated incompetence, untrustworthiness or financial irresponsibility in the conduct of business in the Commonwealth or elsewhere.”

Prevost’s claim for an adjudicatory proceeding gave two bases for his request: 1) that the event that occurred on April 5, 2002, was irresponsible on his part and he had apologized for it; and 2) that since 1988, except for April 5, 2000, he had provided great service and “showed trustworthiness to all insured and insurance companies through my places of employment.” Prevost also provided a copy of a broker’s license that had expired in 1997. At the prehearing conference, Prevost clarified that his record consisted of a single conviction in April 2000 and that he was on probation for two years.

Because the conviction that underlies the Division’s decision is undisputed, the parties agreed to submit memoranda setting out the arguments that support their positions. The Division indicated that it would attach to its submission a copy of the criminal complaint and the judgment entered against Prevost. It also stated that it considered the conviction to be evidence of the type of conduct that allows the Commissioner to deny a license pursuant to G. L. c. 175, §162R (a)(8).

The Division filed a motion for summary decision on February 13, 2004, together with the affidavits of Diane Silverman Black, Director of Producer Licensing for the Division and of Douglas Hale, Esq. Attached to Ms. Silverman Black’s affidavit are copies of a judgment entered in a criminal case brought by the United States against Samuel Prevost and a letter stating that Prevost’s two-year term of probation had ended. With his affidavit, Mr. Hale transmitted a copy of the complaint filed against Prevost in September 1999, which includes the affidavit of the investigating federal agent.

II. The Parties' Arguments

A. *Samuel Prevost*

Prevost's arguments are set out in his statements at the prehearing conference and his statement in support of his request that this matter be resolved in his favor. Prevost has been in the insurance business in Massachusetts since 1988, when he began work as a commercial automobile underwriting assistant for the United States Fidelity and Guaranty Insurance Company. From 1992 to 1994, he worked at an agency in Cambridge. He received an insurance broker's license in 1994 and started his own agency, eventually selling that agency's book of business to his previous employer. Prevost stated that he did not renew his broker's license in 1997 because he decided to pursue a career in music. Over time he has worked for a series of insurance agencies, including the Stanley Shuman agency, which was later purchased by the H. Levenbaum Agency ("Levenbaum"). Initially employed as a customer service representative for Levenbaum, Prevost was later, after April 2000, promoted to manager. Currently he is employed at the Marvin S. Kaplan Insurance Agency, Inc.

In support of his position that he should be granted a producer's license, Prevost states that he has been in the insurance business since graduating from high school. He wishes to continue his career in insurance and hopes that his daughter will also go into the business. Prevost states that he has never defrauded anyone, and has personally handled thousands of premium dollars, all of which were properly directed and accounted for, in the course of his work at agencies and insurance companies.

Prevost does not dispute that he pleaded guilty to a felony, but states that he received nothing for his part in the events underlying the conviction. He apologizes for his conviction and expresses regret for the incident, which he describes as being very irresponsible on his part. In addition, Prevost argues, his conviction did not arise from the conduct of an insurance business. He asserts that he has matured and gained knowledge and experience in the course of his business, and is a loyal and honest person. Prevost states that he is willing to accept a mandatory probation period as a condition of licensure.

B. *The Division*

The Division argues that, when deciding to deny a license application, the Commissioner has broad discretion, which she must exercise fairly and in a manner that is

not arbitrary or capricious. Further, it notes, the burden is on the applicant for a license to demonstrate that he or she meets the applicable statutory standards. The Division points out that the facts underlying the stated reasons for denying Prevost's application are not disputed: He pleaded guilty in federal court to conspiracy to commit bank fraud, which is a felony, and the crime arose "due to relations with an [insurance] agency employee." The Division asserts that the first reason alone, conviction of a felony, is sufficient to support denial of Prevost's application. It argues, as well, that the affidavit supporting the criminal complaint indicates that Prevost's activities that resulted in that complaint were conducted, in part, at Prevost's place of employment. Characterizing Prevost's actions as fraudulent or dishonest practices, and a demonstration of untrustworthiness or financial irresponsibility, the Division argues that they occurred in the conduct of insurance business in Massachusetts. On these facts, it asserts, denial of Prevost's application under c. 175, §162R, (a)(6) and (a)(8) was within the discretion of the Director of Producer Licensing. Further, the Division argues, her decision is supported by substantial evidence. The Division asserts, as well, that Prevost has made no argument that the Director of Producer Licensing exceeded her statutory authority or acted arbitrarily or capriciously.

III. Discussion and Analysis

Prevost applied for an insurance producer's license after the effective date of G. L. c. 175, §§162G-162X, the insurance producer licensing statutes. Section §162R (a) permits, but does not require, the Commissioner to refuse to issue a producer's license for one or more of fourteen itemized reasons. In this case, the Director of Producer Licensing denied Prevost's application for two of those reasons: (a)(6), conviction of a felony; and (a)(8), using fraudulent, coercive or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in the commonwealth or elsewhere.

The issue to be decided on appeal is whether the evidence presented supports the decision of the Director of Producer Licensing to deny Prevost's license application. That Prevost pleaded guilty to a felony is undisputed. The Division takes the position that a conviction for conspiracy to commit bank fraud is, by itself, sufficient to show that Prevost engaged in conduct which also allows the Commissioner to deny him a license pursuant to (a)(8), noting also that the conspiratorial acts took place in Prevost's office.

Prevost argues in summary that, except for the events that led to his guilty plea in April 2000: he has demonstrated qualities that support his application for a license; he did not profit from the conspiracy; and he regrets his past actions. For those reasons, as well as his wish to remain in the insurance business, he takes the position that his felony conviction should not prevent him from holding an insurance producer's license.

After reviewing the parties' submissions and arguments, I do not find Prevost's arguments persuasive. The facts relating to the felony are set out in the federal agent's affidavit which was submitted to the court to support issuance of the criminal complaint. That affidavit describes the following series of events. Between July 30, 1999 and September 8, 1999, Prevost sought the help of a person identified as a cooperating witness ("CW") to cash certain checks that had been stolen by a third person from a residence. Prevost transferred the checks in question, and a photocopy of a bank statement for the account to which they related that included signatures of one accountholder, to the CW at Prevost's place of employment. In conversations with the CW, Prevost stated that he had talked with the person who had stolen the checks about two other potential opportunities for obtaining blank checks, offered advice on the number of times she should attempt to obtain funds in this way, and enquired about the amount of money the victims spent each month on legitimate expenses. Subsequently, with respect to the stolen checks, the CW sought Prevost's assistance in obtaining a handwriting sample from the other accountholder. Prevost later informed the CW that the first accountholder signed checks on the account and that her signature should be put on the stolen checks. The CW thereafter made arrangements to meet with Prevost at a café and turn over the money to him.

Prevost provided no alternative description of those events and offered no information that might mitigate the conclusions that may be drawn from the facts set out in the federal agent's affidavit. No semantic stretch is required to find that conduct designed to deprive a bank and its customers of funds, as described in the criminal complaint, is both fraudulent and dishonest. I find, as well, that it is evidence of untrustworthiness in the conduct of business. The affiant's account portrays a scheme that was pursued over a period of several weeks and potentially involved multiple victims. Furthermore, the facts show that Prevost was an active participant who offered advice on the frequency of thefts

to other participants and attempted to determine the range of expenses paid from the bank account in question. That the scheme was thwarted because of intervening events, thus preventing Prevost and others from receiving any benefit from it, does not alter the nature of the attempted crime or mitigate its seriousness. In addition, although Prevost expresses regret about the events that led to his conviction and has apologized for his actions, he has failed in this proceeding to acknowledge the entire extent of his participation in the scheme.

Prevost's statements that he has fully accounted for premium payments he has received over the years do not persuade me that his application should therefore have been approved. His desire to remain in the insurance business, even if it reflects a commitment to longstanding career goals, is also not sufficient to support granting him a license at this time. A goal of the licensing process, whether under the new producer licensing statute or the former statutes relating to licensing agents and brokers, is to ensure public confidence in the integrity of those who are approved to service and sell insurance in Massachusetts. The financial aspects of the insurance business are not limited to accounting for premiums, but provide opportunities to obtain sensitive personal information. As an insurance producer, Prevost would be in a position that could enable him to gather considerable financial data. To license a person who has demonstrated the capacity to use such data for fraudulent activities will not foster public confidence in the system.

Prevost's argument that the criminal acts should not bar approval of his application because they did not occur in the business of insurance is also not persuasive. Section 162R (a)(6) refers to fraud and dishonesty in the conduct of business in general; it is not limited to the insurance business. Even if it were, over time the historical separation of insurance and banking has eroded; in the broader world of financial services, transactions are difficult to classify as limited to "the business of insurance." In any event, it is undisputed that the criminal conduct took place in part at Prevost's place of employment, an insurance business, and evidently involved another agency employee. Further, assuming, *arguendo*, that the phrase "conduct of business," as used in the statute, implies a continuous operation, the investigator's affidavit indicates that the events that led to Prevost's conviction were the initial acts in what was perceived as a longer term, multi-victim enterprise.

I find, as well, that denial of Prevost's license application is consistent with actions that the Division has taken in the past. *See, e.g., Janeczek v. Division of Insurance*, Docket No. E96-5; *Swartz v. Division of Insurance*, Docket No. E95-11; *Division of Insurance v David*, Docket No. E94-20, *aff'd on appeal, David v. Commissioner of Insurance*, 53 Mass. App. 162 (2001). Prevost has offered no argument that the reasoning in those decisions is not applicable in this appeal.

IV. Conclusion

For the above reasons, I find that the evidence supports the decision to deny Samuel Prevost's application for a producer's license. I therefore deny his appeal and uphold the Division's denial of his application.

So Ordered.

Dated: March 4, 2004

Jean F. Farrington
Presiding Officer

Pursuant to G.L. c. 26 §7, this decision may be appealed to the Commissioner of Insurance within three days.